

May 06, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 1:18-CV-03079-JTR

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment. ECF Nos. 14, 16. Attorney D. James Tree represents Michael H. (Plaintiff); Special Assistant United States Attorney Jeffrey R. McClain represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 8. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS, in part**, Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. §§ 405(g), 1383(c).

JURISDICTION

Plaintiff filed an application for Supplemental Security Income (SSI) on January 8, 2014, Tr. 63, alleging disability since June 10, 2013, Tr. 170, due to hepatitis C, arthritis, high blood pressure, chronic lower back pain, and

1 hypothyroidism, Tr. 193. The application was denied initially and upon
2 reconsideration. Tr. 81-88, 91-97. Administrative Law Judge (ALJ) Ilene Sloan
3 held hearings on April 11, 2016 and June 29, 2016 and heard testimony from
4 Plaintiff and vocational expert Leta Berkshire. Tr. 34-62. The ALJ issued an
5 unfavorable decision on March 1, 2017. Tr. 18-29. The Appeals Council denied
6 review on March 20, 2018. Tr. 1-6. The ALJ's March 1, 2017 decision became
7 the final decision of the Commissioner, which is appealable to the district court
8 pursuant to 42 U.S.C. §§ 405(g), 1383(c). Plaintiff filed this action for judicial
9 review on May 17, 2018. ECF Nos. 1, 4.

10 **STATEMENT OF FACTS**

11 The facts of the case are set forth in the administrative hearing transcript, the
12 ALJ's decision, and the briefs of the parties. They are only briefly summarized
13 here.

14 Plaintiff was 50 years old at the date of application. Tr. 170. He completed
15 two years of college in 1983. Tr. 194. His reported work history includes the jobs
16 of forklift operator/truck driver, laborer, and shipping supervisor. *Id.* When
17 applying for benefits Plaintiff reported that he stopped working on June 10, 2013
18 because of his conditions. Tr. 193.

19 **STANDARD OF REVIEW**

20 The ALJ is responsible for determining credibility, resolving conflicts in
21 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
22 1039 (9th Cir. 1995). The Court reviews the ALJ's determinations of law de novo,
23 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d
24 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is
25 not supported by substantial evidence or if it is based on legal error. *Tackett v.*
26 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
27 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
28 another way, substantial evidence is such relevant evidence as a reasonable mind

1 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
2 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational
3 interpretation, the court may not substitute its judgment for that of the ALJ.
4 *Tackett*, 180 F.3d at 1097. If substantial evidence supports the administrative
5 findings, or if conflicting evidence supports a finding of either disability or non-
6 disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d
7 1226, 1229-30 (9th Cir. 1987). Nevertheless, a decision supported by substantial
8 evidence will be set aside if the proper legal standards were not applied in
9 weighing the evidence and making the decision. *Brawner v. Secretary of Health*
10 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

11 **SEQUENTIAL EVALUATION PROCESS**

12 The Commissioner has established a five-step sequential evaluation process
13 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *see Bowen*
14 *v. Yuckert*, 482 U.S. 137, 140-42 (1987). In steps one through four, the burden of
15 proof rests upon the claimant to establish a *prima facie* case of entitlement to
16 disability benefits. *Tackett*, 180 F.3d at 1098-99. This burden is met once the
17 claimant establishes that physical or mental impairments prevent him from
18 engaging in his previous occupations. 20 C.F.R. § 416.920(a)(4). If the claimant
19 cannot do his past relevant work, the ALJ proceeds to step five, and the burden
20 shifts to the Commissioner to show that (1) the claimant can make an adjustment to
21 other work, and (2) the claimant can perform specific jobs which exist in
22 significant numbers in the national economy. *Batson v. Comm'r of Soc. Sec.*
23 *Admin.*, 359 F.3d 1190, 1193-94 (9th Cir. 2004). If the claimant cannot make an
24 adjustment to other work in the national economy, he is found "disabled." 20
25 C.F.R. § 416.920(a)(4)(v).

26 **ADMINISTRATIVE DECISION**

27 On March 1, 2017, the ALJ issued a decision finding Plaintiff was not
28 disabled as defined in the Social Security Act from January 8, 2014 through the

1 date of the decision.

2 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
3 activity since January 8, 2014, the date of application. Tr. 20.

4 At step two, the ALJ determined that Plaintiff had the following severe
5 impairments: cervical spine degenerative disc disease and lumbar spine
6 spondylosis. Tr. 20.

7 At step three, the ALJ found that Plaintiff did not have an impairment or
8 combination of impairments that met or medically equaled the severity of one of
9 the listed impairments. Tr. 22.

10 At step four, the ALJ assessed Plaintiff's residual function capacity and
11 determined he could perform a range of light work with the following limitations:

12 [H]e can stand and or walk 4 hours in an 8-hour workday. He can sit 6
13 hours in an 8-hour workday. He can occasionally climb ladders, ropes,
14 and scaffolds. He is unlimited in his ability to balance. He can
15 frequently stoop, kneel, and crouch. He can occasionally crawl. He
16 must avoid concentrated exposure to vibration and hazards.

17 Tr. 22-23. The ALJ identified Plaintiff's past relevant work as truck
18 operator/forklift operator and shipping supervisor and found that he could not
19 perform this past relevant work. Tr. 27-28.

20 At step five, the ALJ determined that, considering Plaintiff's age, education,
21 work experience and residual functional capacity, and based on the testimony of
22 the vocational expert, there were other jobs that exist in significant numbers in the
23 national economy Plaintiff could perform, including the jobs of production line
24 solderer, electrical accessories assembler, and office helper. Tr. 28 . The ALJ
25 concluded Plaintiff was not under a disability within the meaning of the Social
26 Security Act from January 8, 2014, through the date of the ALJ's decision. Tr. 29.

27 **ISSUES**

28 The question presented is whether substantial evidence supports the ALJ's

1 decision denying benefits and, if so, whether that decision is based on proper legal
2 standards. Plaintiff contends the ALJ erred by (1) failing to consider Plaintiff's
3 pain disorder at step two, (2) failing to properly weigh medical opinions, (3) failing
4 to make a proper step five determination, and (4) failing to properly weigh
5 Plaintiff's symptom statements.

DISCUSSION¹

1. Step Two

8 Plaintiff argues that the ALJ failed to address Plaintiff's pain disorder
9 associated with psychological and physical factors at step two. ECF No. 14 at 4-6.

10 At step two of the sequential process, the ALJ must determine whether a
11 claimant suffers from a "severe" impairment. 20 C.F.R. § 416.920(c). To show a
12 severe impairment, the claimant must first establish the existence of a medically
13 determinable impairment by providing medical evidence consisting of signs,
14 symptoms, and laboratory findings; the claimant's own statement of symptoms, a
15 diagnosis, or a medical opinion is not sufficient to establish the existence of an
16 impairment. 20 C.F.R. § 416.921.² "[O]nce a claimant has shown that he suffers
17 from a medically determinable impairment, he next has the burden of proving that
18 these impairments and their symptoms affect his ability to perform basic work

20 ¹In *Lucia v. S.E.C.*, 138 S.Ct. 2044 (2018), the Supreme Court recently held
21 that ALJs of the Securities and Exchange Commission are "Officers of the United
22 States" and thus subject to the Appointments Clause. To the extent *Lucia* applies
23 to Social Security ALJs, the parties have forfeited the issue by failing to raise it in
24 their briefing. See *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161
25 n.2 (9th Cir. 2008) (the Court will not consider matters on appeal that were not
26 specifically addressed in an appellant's opening brief).

27 ²Prior to March 17, 2017, these requirements were set forth in 20 C.F.R.
28 §416.908, 416.928 (2016).

1 activities.” *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2001). If the
2 claimant fulfills this burden, the ALJ must find the impairment “severe.” *Id.* The
3 step-two analysis is “a de minimis screening device used to dispose of groundless
4 claims.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005).

5 At step two, the ALJ found that Plaintiff had no medically determinable
6 severe mental health impairment. Tr. 20. She did identify anxiety as a medically
7 determinable impairment, Tr. 20, but found that it was not severe: “claimant’s
8 medically determinable mental impairment of anxiety disorder does not cause
9 more than minimal limitation in the claimant’s ability to perform basic mental
10 work activities and is therefore nonsevere,” Tr. 21. There was no discussion of a
11 pain disorder in the ALJ’s decision.

12 Leslie P. Schneider, Ph.D. diagnosed Plaintiff with pain disorder associated
13 with psychological and physical factors on January 13, 2015. Tr. 545. Plaintiff
14 argues that the diagnosis requires the ALJ to address the pain disorder at step two.
15 ECF No. 14 at 4-5. Citing 20 C.F.R. 416.921, Defendant argues that Dr.
16 Schneider’s diagnosis is not sufficient to find any pain disorder medically
17 determinable. ECF No. 16 at 3. While Defendant is accurate that a diagnosis or
18 medical opinion does not establish the existence of an impairment, 20 C.F.R. §
19 416.921, the case is being remanded for additional proceedings. The basis of the
20 remand is the ALJ’s failure to properly address the opinions of medical providers
21 who diagnosed Plaintiff with impairments associated with pain, Tr. 316, 318, 584-
22 85. *See infra.* Therefore, upon remand, the ALJ will also address any evidence
23 supporting the existence of a pain disorder.

24 **2. Medical Opinions**

25 Plaintiff argues the ALJ failed to properly consider and weigh the medical
26 opinions expressed by Jeremiah Crank, M.D., Steven Foster, D.O., Myrna Palasi,
27 M.D., William Drenguis, M.D., Leslie Schneider, Ph.D., Dan Donahue, Ph.D., and
28 Olegario Ignacio, Jr., M.D. ECF No. 14 at 5-18.

1 In weighing medical source opinions, the ALJ should distinguish between
2 three different types of physicians: (1) treating physicians, who actually treat the
3 claimant; (2) examining physicians, who examine but do not treat the claimant;
4 and, (3) nonexamining physicians who neither treat nor examine the claimant.

5 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). The ALJ should give more
6 weight to the opinion of a treating physician than to the opinion of an examining
7 physician. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). Likewise, the ALJ
8 should give more weight to the opinion of an examining physician than to the
9 opinion of a nonexamining physician. *Id.*

10 When an examining physician's opinion is not contradicted by another
11 physician, the ALJ may reject the opinion only for "clear and convincing" reasons,
12 and when an examining physician's opinion is contradicted by another physician,
13 the ALJ is only required to provide "specific and legitimate reasons" to reject the
14 opinion. *Lester*, 81 F.3d at 830-31. The specific and legitimate standard can be
15 met by the ALJ setting out a detailed and thorough summary of the facts and
16 conflicting clinical evidence, stating his interpretation thereof, and making
17 findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). The ALJ is
18 required to do more than offer his conclusions, he "must set forth his
19 interpretations and explain why they, rather than the doctors', are correct."
20 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

21 **A. Jeremiah Crank, M.D.**

22 On March 6, 2014, Dr. Crank evaluated Plaintiff and completed a Physical
23 Functional Evaluation form for the Washington Department of Social and Health
24 Services (DSHS). Tr. 317-21, 367-70. Dr. Crank diagnosed Plaintiff with back
25 pain/degenerative disc disease with radiculopathy. Tr. 318. He opined that
26 Plaintiff had a marked limitation in the following basic work activities: sitting,
27 standing, walking, lifting, carrying, handling, pushing, pulling, reaching, stooping,
28 and crouching. *Id.* He opined that Plaintiff was capable of sedentary work in a

1 regular predictable manner despite his impairment. Tr. 319. The ALJ gave the
2 opinion that Plaintiff was limited to sedentary work little weight because Dr. Crank
3 “did not have the benefit of objective imaging.” Tr. 26.

4 First, Plaintiff challenges the ALJ’s treatment of the opinion by asserting
5 that the ALJ only rejected the limitation to sedentary work and failed to address the
6 marked limitation in the abilities to handle, push, pull, reach, stoop, and crouch.
7 ECF No. 14 at 7-8. Social Security Ruling (S.S.R.) 96-8p states that the residual
8 functional capacity assessment “must always consider and address medical source
9 opinions. If the [residual functional capacity] assessment conflicts with an opinion
10 from a medical source, the adjudicator must explain why the opinion was not
11 adopted.” Here, Dr. Crank’s opinion addressed Plaintiff’s ability to handle, push,
12 pull, reach, stoop, and crouch, Tr. 318, but the ALJ’s decision only addressed the
13 limitation to sedentary work, Tr. 26. The ALJ’s residual functional capacity
14 determination addressed limitations in stooping and crouching, but failed to
15 address handling, pushing, pulling, and reaching. Tr. 22-23. Therefore, the ALJ
16 failed to properly address all of Dr. Crank’s opinion. This was an error.

17 Second, Plaintiff challenges the ALJ’s rejection of Dr. Crank’s opinion by
18 asserting that the ALJ failed to address the factors listed in 20 C.F.R. § 416.927.
19 ECF No. 14 at 8. Defendant argues that the ALJ’s rationale for rejecting the
20 limitation to sedentary work, that the provider did not review the imaging reports,
21 demonstrates that the ALJ considered the factors set forth in 20 C.F.R. § 416.927.
22 ECF No. 16 at 13. One of the factors the ALJ is to consider is supportability: “The
23 more a medical source presents relevant evidence to support a medical opinion,
24 particularly medical signs and laboratory findings, the more weight we will give
25 that medical opinion.” 20 C.F.R. § 416.927(c)(3). Therefore, the ALJ’s reason for
26 rejecting the limitation to sedentary work shows she considered the factors under
27 20 C.F.R. § 416.927.

28 Third, Plaintiff argues that the ALJ’s determination that Dr. Crank did not

1 review imaging was not supported by substantial evidence. ECF No. 14 at 10
2 (“Given that Dr. Crank was [Plaintiff’s] primary care provider (*e.g.* Tr. 357), it is
3 also highly likely Dr. Crank at least reviewed the reference imaging.”). In the
4 March 6, 2014 evaluation report, Dr. Crank stated that Plaintiff reported that he
5 had degenerative disc disease present on his imaging. Tr. 367. However, later in
6 the report, Dr. Crank stated that he followed up with Dr. Lyzencheck at Quality
7 Care in Yakima, who Dr. Crank identified as Plaintiff’s primary care physician,
8 and learned that two years ago imaging of the lower back showed degenerative
9 disc disease/impingement in nerves. *Id.* The record is unclear as to whether Dr.
10 Crank actually reviewed the imaging reports or simply spoke with Dr. Lyzencheck.
11 The Court recognizes that the responsibility of resolving ambiguities lies with the
12 ALJ. *Andrews*, 53 F.3d at 1039. However, because the ALJ failed to address the
13 opinion in full, a remand is required. Upon remand, the ALJ will consider all the
14 factors set forth in 20 C.F.R. § 416.927 and consider Dr. Crank’s follow-up with
15 Dr. Lyzencheck when addressing the opinion.

16 **B. Steven Foster, D.O.**

17 On January 8, 2015, Dr. Foster evaluated Plaintiff and completed a Physical
18 Functional Evaluation form for DSHS. Tr. 584-88. Dr. Foster diagnosed Plaintiff
19 with lumbago and opined that he had a moderate to marked limitation in the
20 following basic work activities: sitting, standing, walking, lifting, carrying,
21 handling, pushing, pulling, reaching, stooping, and crouching. Tr. 585. He then
22 opined that Plaintiff was capable of performing sedentary work in a regular
23 predictable manner despite his impairment. Tr. 586. The ALJ gave the opinion
24 that Plaintiff was limited to sedentary work little weight because Dr. Foster “did
25 not have the benefit of objective imaging.” Tr. 26.

26 First, Plaintiff challenges the ALJ’s treatment of Dr. Foster’s opinion by
27 asserting that she failed to address the full opinion. ECF No. 14 at 7-8. S.S.R. 96-
28 8p states that the residual functional capacity assessment “must always consider

1 and address medical source opinions. If the [residual functional capacity]
2 assessment conflicts with an opinion from a medical source, the adjudicator must
3 explain why the opinion was not adopted.” Here, like Dr. Crank’s opinion, Dr.
4 Foster’s opinion addressed Plaintiff’s ability to handle, push, pull, reach, stoop,
5 and crouch, Tr. 318, but the ALJ’s decision only addressed the limitation to
6 sedentary work, Tr. 26. The ALJ’s residual functional capacity determination
7 addressed limitations in the ability to stoop and crouch, but failed to address any
8 limitations in handling, pushing, pulling, and reaching. Tr. 22-23. Therefore, the
9 ALJ failed to properly address all of Dr. Foster’s opinion. This is an error.

10 Second, Plaintiff challenges the ALJ’s rejection of Dr. Foster’s opinion by
11 asserting that the ALJ failed to address the factors listed in 20 C.F.R. § 416.927.
12 ECF No. 14 at 8. Defendant argues that the ALJ’s rationale for rejecting the
13 limitation to sedentary work, that the provider did not review the imaging reports,
14 demonstrates that the ALJ considered the factors set forth in 20 C.F.R. § 416.927.
15 ECF No. 16 at 13. As addressed above, one of the factors the ALJ is to consider is
16 supportability: “The more a medical source presents relevant evidence to support a
17 medical opinion, particularly medical signs and laboratory findings, the more
18 weight we will give that medical opinion.” 20 C.F.R. § 416.927(c)(3). Therefore,
19 the ALJ’s reason for rejecting the limitation to sedentary work shows she
20 considered the factors set forth in 20 C.F.R. § 416.927.

21 Third, Plaintiff argues that the ALJ’s determination that Dr. Foster did not
22 review imaging was not supported by substantial evidence. ECF No. 14 at 9. On
23 May 16, 2014, Dr. Foster ordered new x-rays of the lower spine. Tr. 361.
24 However, there is no evidence that these x-rays were taken. On August 5, 2014
25 Dr. Hurtarte stated that Plaintiff was referred to him by Dr. Foster. Tr. 441. Dr.
26 Hurtarte had the April 26, 2014 x-ray of the lumbar spine, an MRI of the lumbar
27 spine from 2012, and a February 28, 2012 CT of the cervical spine to review. Tr.
28 442-43. Defendant asserts that because Dr. Foster referred Plaintiff to Dr.

1 Hurtarte, the fact that Dr. Hurtarte had the imaging results is evidence that Dr.
2 Foster had the imaging results. ECF No. 14 at 9. The evidence surrounding
3 whether Dr. Foster reviewed the imaging reports prior to penning the opinion is
4 unclear. Again, the responsibility of resolving ambiguities lies with the ALJ.
5 *Andrews*, 53 F.3d at 1039. However, the case is remanded for the ALJ to address
6 Dr. Foster's entire opinion.

7 **C. Myrna Palasi, M.D.**

8 On March 12, 2014, Dr. Palasi reviewed records from Yakima
9 Neighborhood Health and opined that Plaintiff was limited to sedentary work with
10 marked limitations in gross or fine motor skills restrictions and postural
11 restrictions. Tr. 315. The ALJ did not discuss Dr. Palasi's opinion in her decision
12 Tr. 26-27. The residual functional capacity assessment "must always consider and
13 address medical source opinions. If the [residual functional capacity] assessment
14 conflicts with an opinion from a medical source, the adjudicator must explain why
15 the opinion was not adopted." S.S.R. 96-8p. Therefore, the ALJ's failure to
16 address Dr. Palasi's opinion was an error.

17 Defendant argues that the ALJ addressed Dr. Palasi's opinion by listing
18 Exhibit 4F when discussing Dr. Crank's opinion. ECF No. 16 at 14. Exhibit 4F
19 includes both Dr. Palasi's opinion and Dr. Crank's opinion. Tr. 313-23. Dr.
20 Palasi's opinion is similar to Dr. Crank's opinion; however, the ALJ failed to
21 properly address all of Dr. Crank's opinion. Simply because two doctors'
22 conclusions are the same does not mean that both doctors reviewed the same
23 evidence or employed the same reasoning. Therefore, the ALJ must discuss Dr.
24 Palasi's opinion on remand.

25 **D. Remaining Medical Opinions**

26 Plaintiff also challenges the ALJ treatment of the opinions from William
27 Drenguis, M.D., Leslie Schneider, Ph.D., Dan Donahue, Ph.D., and Olegario
28 Ignacio, Jr., M.D. ECF No. 14 at 16-18. Since the case is being remanded for the

1 ALJ to properly address the opinions of Dr. Crank, Dr. Foster, and Dr. Palasi, the
2 ALJ will readdress all the medical source opinions on remand.

3 **3. Step 5**

4 Plaintiff challenges the ALJ's step five determination by asserting that the
5 vocational expert's testimony was inconsistent with Job Browser Pro, a computer
6 program used in the industry to provide numbers for jobs associated with the
7 Dictionary of Occupations Title (DOT) codes identified in steps four and five.
8 ECF No. 14 at 18-20. Plaintiff's counsel submits print-outs from Job Browser Pro
9 for the positions identified by the ALJ at step five and asserts that the vocational
10 expert overreported the number of jobs available under each DOT code. ECF Nos.
11 14 at 18-20, 14-1.

12 This case is being remanded for the ALJ to readdress the medical source
13 opinions in the record. This will require the ALJ to make a new residual functional
14 capacity determination followed by new determinations at steps four and five.
15 Therefore, the ALJ will call a new vocational expert to testify at remand
16 proceedings that will be subject to cross examination by Plaintiff's counsel.

17 **4. Plaintiff's Symptom Statements**

18 Plaintiff contests the ALJ's determination that Plaintiff's symptom
19 statements were not supported in the record. ECF No. 14 at 20-21.

20 The evaluation of a claimant's symptom statements and their resulting
21 limitations relies, in part, on the assessment of the medical evidence. *See* 20
22 C.F.R. § 416.929(c); S.S.R. 16-3p. Therefore, in light of the case being remanded
23 for the ALJ to readdress the medical source opinions in the file, a new assessment
24 of Plaintiff's subjective symptom statements will be necessary.

25 **REMEDY**

26 Plaintiff asks the Court to apply the credit-as-true rule and remand this case
27 for an immediate award of benefits. ECF No. 14 at 11.

28 The decision whether to remand for further proceedings or reverse and

1 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
2 888 F.2d 599, 603 (9th Cir. 1989). Under the credit-as-true rule, where (1) the
3 record has been fully developed and further administrative proceedings would
4 serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons
5 for rejecting evidence, whether claimant testimony or medical opinion; and (3) if
6 the improperly discredited evidence were credited as true, the ALJ would be
7 required to find the claimant disabled on remand, the Court remands for an award
8 of benefits. *Revels v. Berryhill*, 874 F.3d 648, 668 (9th Cir. 2017). But where
9 there are outstanding issues that must be resolved before a determination can be
10 made, and it is not clear from the record that the ALJ would be required to find a
11 claimant disabled if all the evidence were properly evaluated, remand is
12 appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004);
13 *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

14 In this case, it is not clear from the record that the ALJ would be required to
15 find Plaintiff disabled if all the evidence were properly evaluated. Further
16 proceedings are necessary for the ALJ to properly address Plaintiff's alleged pain
17 disorder at step two, to properly consider all the medical opinions in the record, to
18 properly consider Plaintiff's symptom statements, to make a new residual
19 functional capacity determination, and to make a new determination at steps four
20 and five. Additionally, the ALJ will supplement the record with any outstanding
21 evidence and call a medical expert and a vocational expert to testify at a remand
22 hearing.

23 CONCLUSION

24 Accordingly, **IT IS ORDERED:**

25 1. Defendant's Motion for Summary Judgment, **ECF No. 16**, is

26 **DENIED.**

27 2. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is

28 **GRANTED, in part**, and the matter is **REMANDED** for additional proceedings

1 consistent with this Order.

2 3. Application for attorney fees may be filed by separate motion.

3 The District Court Executive is directed to file this Order and provide a copy
4 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Plaintiff**
5 and the file shall be **CLOSED**.

6 DATED May 6, 2019.



A handwritten signature in black ink, appearing to read "M".

7 JOHN T. RODGERS
8 UNITED STATES MAGISTRATE JUDGE
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